LTC – DRA ARTICLE

On February 8, 2006, President Bush signed the Deficit Reduction Act ("DRA") of 2005 into law. See, P.L. 109-171 (2/8/06). The DRA has impact on many public assistance programs, but probably the most drastic effect is upon the long-term care Medical Assistance Program ("LTC"). The DRA overhauls LTC eligibility in the following areas: (1) the "look back" reporting period; (2) the transfer penalty period start date; (3) the hardship waiver of the transfer penalty period; (4) annuities; (5) income first; (6) home equity threshold cap; (7) partial month; (8) promissory notes; and (9) life estates.

1. Look Back Reporting Period (Section 6011(a)) (DHS Policy Cite 0384.05 and 0384.10)

   Prior to the DRA, when someone applied for LTC coverage, she/he had to report to the state any transfers made within thirty-six (36) months of the application if the transfer was to a person and within sixty (60) months of the application if the transfer was to a trust.

   Post DRA, the look back reporting period has changed. In transfers prior to February 8, 2006, the "old" rules apply. In transfers after February 8, 2006, the applicant must report all transfers made within sixty (60) months of the application, regardless of whether the transfer is to a person or to a trust.

2. Penalty Period Start Date (Section 6011(b)) (DHS Policy Section 0384.20, 0384.25 and 0384.25.05)

Prior to the DRA, if a person made an uncompensated transfer of assets within the reporting period, a penalty period would be applied. What's the penalty period? The penalty period is the period during which the person is prohibited from receiving LTC benefits. The period, prior to DRA, was calculated as follows:

Step One:

Amount Transferred – Monthly Amount LTC Pays = X Months (Penalty Period)
To a Nursing Home[1]

Step Two:

Date Amount was Transferred (PRE-DRA Penalty Start Date) + X Months = Date a Person Can Receive LTC Benefits

Under the pre-DRA regulations, the start of the penalty period is the date that the person made the uncompensated transfer of assets. Post DRA regulations change the start date effective with transfers made on or after February 8, 2006. The above calculation remains the same for Step One. Step Two changes.

[1] The amount (changes each year and can be found at DHS Policy Section 0384.20

Step Two:

Date of the Transfer or + X Months = Date a Person Can Receive LTC Benefits

The Date the Person
Would Have Been
Otherwise Eligible,
Whichever is Later

The phrase: "date the person who has been otherwise eligible" is crucial. It means that for the transfer the person would be eligible for LTC benefits. It has three requirements. First, the person must have an institutionalized level of care as defined in 1917 (e)(i)(C). Second, the person must be financially eligible in accordance with the DHS regulations. Third, the person must file an application for LTC. This third criterion was mandated by the federal government. It is crucial that this step be taken in order to "start the clock ticking".

3. Hardship Waivers (Section 6011(a)) (DHS Policy Section 0384.45.05 and 0384.45.05.05)

Rhode Island Department of Human Services has had a hardship section for many years. The only change for Rhode Island is that effective July 1, 2006 the facility now has the right to appeal a person's denial of LTC due to a transfer of assets, as long as the facility has the person's permission. Additionally, there is a provision for hardships for people who made transfers shortly after DRA was enacted.

4. Annuities (Section 6012)(DHS Policy Section 0382.15.35)

Rhode Island Department of Human Services has had policy that comports with most of the DRA requirements for annuities. The only change for Rhode Island is that for annuities purchased on or after February 8, 2006, the state must be the first remainder beneficiary up to the amount of Medical Assistance paid. The state can be a second remainder after a spouse and/or minor or disabled child. This remainder position is required for the applicant and the applicant's spouse.

5. Income First (Section 6013) (DHS Policy Section 0392.15.20)

Pre-DRA, Rhode Island was a "resource first" state. Post-DRA, all states are required to apply the "income first" policy to individuals institutionalized on or after February 8, 2006. This policy requires that any transfer or allocation made from an institutionalized spouse to meet the need of a community spouse for a minimum monthly income allowance be first made from income of the institutionalized spouse.

6. Home Equity Threshold Cap (Section 6014)(DHS Policy Section 0380.35 and 0382.10.25)

Pre-DRA, the LTC applicant's home was excluded resource and did not effect eligibility.

Post-DRA, individuals with an equity interest in their home of greater than five hundred thousand ($500,000.00) are ineligible for LTC. The exceptions to this are: (1) if there is a community spouse or minor or disabled child residing in the home; and (2) reverse mortgages and equity lines of credit do not count towards the equity value of the home. The DRA has a grandfathering clause that allows this provision to only apply to the applications and re-determinations of individuals who apply after January 1, 2006. This provision does not apply to individuals who applied and were determined eligible before January 1, 2006 and have no break in LTC eligibility before January 1, 2006.

7. <u>Partial Months</u> (Section 6016(a))(DHS Policy Section 0384.25)

Pre-DRA, the Rhode Island Department of Human Services would "round down" when doing the calculation of the penalty period, described in Number 2 herein. Post-DRA, there is no "rounding up" or "down". An exact calculation of months and days is to be utilized, effective July 1, 2006.

8. Promissory Notes (Section 6016(c))(DHS Policy Section 0382.15.20.10)

Pre-DRA, promissory notes were examined to determine whether they should count as an available asset. Post-DRA, effective July 1, 2006, the examination of promissory notes of applicants and re-determinations is more thorough. A promissory note is considered an asset unless it is actuarially sound, provides for regular and periodic payments with no deferral or balloon payments and prohibits the cancellation of the balance upon the death of the lender. If the note is considered an asset, the value of the instrument will be the outstanding balance due as of the date of the individual's application for LTC.

9. Life Estates (Section 6016(d))(DHS Policy Section 0382.55 and 0382.55.05)

Pre-DRA, life estates were treated as an exempt asset that did not affect eligibility. The DRA requires that, in order for life estate to be excluded, an individual who purchases a life estate on or after July 1, 2006, must reside in the home for at least after the date of purchase. If this criterion is not meet, the purchase of the life estate will be treated as an uncompensated transfer. The full purchase price will be counted as the uncompensated transfer and that will trigger a penalty period as discussed herein.

The above represents a summary of the changes to LTC eligibility post-DRA. Each of these provisions has a different effective date. Some of the changes will result in immediate results. Other changes will not have an effect for years.